

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 197**

FINAL READING

Introduced by Fulton, 29.

Read first time January 12, 2009

Committee: Education

A BILL

1 FOR AN ACT relating to the Nebraska educational savings plan trust;

2 to amend sections 77-2716, 85-1801, 85-1802, 85-1804,

3 85-1807, 85-1808, and 85-1813, Reissue Revised Statutes

4 of Nebraska, and Laws 2009, First Special Session, LB 1,

5 section 228; to redefine terms; to create and eliminate

6 funds; to change and eliminate provisions relating to the

7 use of funds; to provide for and change transfers of

8 funds; to harmonize provisions; to provide an operative

9 date; to repeal the original sections; to outright repeal

10 section 85-1803, Reissue Revised Statutes of Nebraska, as

11 amended by section 95, Legislative Bill 3, One Hundred

12 First Legislature, First Special Session, 2009; and to

13 declare an emergency.

LB 197

LB 197

1 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-2716, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2716 (1) The following adjustments to federal adjusted  
4 gross income or, for corporations and fiduciaries, federal taxable  
5 income shall be made for interest or dividends received:

6           (a) There shall be subtracted interest or dividends  
7 received by the owner of obligations of the United States and its  
8 territories and possessions or of any authority, commission, or  
9 instrumentality of the United States to the extent includable in  
10 gross income for federal income tax purposes but exempt from state  
11 income taxes under the laws of the United States;

12           (b) There shall be subtracted that portion of the  
13 total dividends and other income received from a regulated  
14 investment company which is attributable to obligations described  
15 in subdivision (a) of this subsection as reported to the recipient  
16 by the regulated investment company;

17           (c) There shall be added interest or dividends received  
18 by the owner of obligations of the District of Columbia, other  
19 states of the United States, or their political subdivisions,  
20 authorities, commissions, or instrumentalities to the extent  
21 excluded in the computation of gross income for federal income  
22 tax purposes except that such interest or dividends shall not be  
23 added if received by a corporation which is a regulated investment  
24 company;

25           (d) There shall be added that portion of the total

1 dividends and other income received from a regulated investment  
2 company which is attributable to obligations described in  
3 subdivision (c) of this subsection and excluded for federal  
4 income tax purposes as reported to the recipient by the regulated  
5 investment company; and

6 (e) (i) Any amount subtracted under this subsection shall  
7 be reduced by any interest on indebtedness incurred to carry the  
8 obligations or securities described in this subsection or the  
9 investment in the regulated investment company and by any expenses  
10 incurred in the production of interest or dividend income described  
11 in this subsection to the extent that such expenses, including  
12 amortizable bond premiums, are deductible in determining federal  
13 taxable income.

14 (ii) Any amount added under this subsection shall be  
15 reduced by any expenses incurred in the production of such income  
16 to the extent disallowed in the computation of federal taxable  
17 income.

18 (2) There shall be allowed a net operating loss derived  
19 from or connected with Nebraska sources computed under rules  
20 and regulations adopted and promulgated by the Tax Commissioner  
21 consistent, to the extent possible under the Nebraska Revenue  
22 Act of 1967, with the laws of the United States. For a resident  
23 individual, estate, or trust, the net operating loss computed  
24 on the federal income tax return shall be adjusted by the  
25 modifications contained in this section. For a nonresident

1 individual, estate, or trust or for a partial-year resident  
2 individual, the net operating loss computed on the federal return  
3 shall be adjusted by the modifications contained in this section  
4 and any carryovers or carrybacks shall be limited to the portion of  
5 the loss derived from or connected with Nebraska sources.

6 (3) There shall be subtracted from federal adjusted gross  
7 income for all taxable years beginning on or after January 1, 1987,  
8 the amount of any state income tax refund to the extent such refund  
9 was deducted under the Internal Revenue Code, was not allowed in  
10 the computation of the tax due under the Nebraska Revenue Act of  
11 1967, and is included in federal adjusted gross income.

12 (4) Federal adjusted gross income, or, for a fiduciary,  
13 federal taxable income shall be modified to exclude the portion of  
14 the income or loss received from a small business corporation with  
15 an election in effect under subchapter S of the Internal Revenue  
16 Code or from a limited liability company organized pursuant to the  
17 Limited Liability Company Act that is not derived from or connected  
18 with Nebraska sources as determined in section 77-2734.01.

19 (5) There shall be subtracted from federal adjusted gross  
20 income or, for corporations and fiduciaries, federal taxable income  
21 dividends received or deemed to be received from corporations which  
22 are not subject to the Internal Revenue Code.

23 (6) There shall be subtracted from federal taxable income  
24 a portion of the income earned by a corporation subject to the  
25 Internal Revenue Code of 1986 that is actually taxed by a foreign

1 country or one of its political subdivisions at a rate in excess  
2 of the maximum federal tax rate for corporations. The taxpayer may  
3 make the computation for each foreign country or for groups of  
4 foreign countries. The portion of the taxes that may be deducted  
5 shall be computed in the following manner:

6 (a) The amount of federal taxable income from operations  
7 within a foreign taxing jurisdiction shall be reduced by the amount  
8 of taxes actually paid to the foreign jurisdiction that are not  
9 deductible solely because the foreign tax credit was elected on the  
10 federal income tax return;

11 (b) The amount of after-tax income shall be divided by  
12 one minus the maximum tax rate for corporations in the Internal  
13 Revenue Code; and

14 (c) The result of the calculation in subdivision (b) of  
15 this subsection shall be subtracted from the amount of federal  
16 taxable income used in subdivision (a) of this subsection. The  
17 result of such calculation, if greater than zero, shall be  
18 subtracted from federal taxable income.

19 (7) Federal adjusted gross income shall be modified to  
20 exclude any amount repaid by the taxpayer for which a reduction  
21 in federal tax is allowed under section 1341(a)(5) of the Internal  
22 Revenue Code.

23 (8) (a) Federal adjusted gross income or, for corporations  
24 and fiduciaries, federal taxable income shall be reduced, to the  
25 extent included, by income from interest, earnings, and state

1 contributions received from the Nebraska educational savings plan  
2 trust created in sections 85-1801 to 85-1814.

3 ~~(b) Federal adjusted gross income or, for corporations~~  
4 ~~and fiduciaries, federal taxable income shall be reduced, to the~~  
5 ~~extent not deducted for federal income tax purposes, by the amount~~  
6 ~~of any gift, grant, or donation made to the Nebraska educational~~  
7 ~~savings plan trust for deposit in the endowment fund of the trust.~~

8 ~~(e)~~ (b) Federal adjusted gross income or, for  
9 corporations and fiduciaries, federal taxable income shall be  
10 reduced by any contributions as a participant in the Nebraska  
11 educational savings plan trust, to the extent not deducted for  
12 federal income tax purposes, but not to exceed two thousand five  
13 hundred dollars per married filing separate return or five thousand  
14 dollars for any other return.

15 ~~(d)~~ (c) Federal adjusted gross income or, for  
16 corporations and fiduciaries, federal taxable income shall be  
17 increased by the amount resulting from the cancellation of a  
18 participation agreement refunded to the taxpayer as a participant  
19 in the Nebraska educational savings plan trust to the extent  
20 previously deducted as a contribution to the trust.

21 (9) (a) For income tax returns filed after September 10,  
22 2001, for taxable years beginning or deemed to begin before January  
23 1, 2006, under the Internal Revenue Code of 1986, as amended,  
24 federal adjusted gross income or, for corporations and fiduciaries,  
25 federal taxable income shall be increased by eighty-five percent

1 of any amount of any federal bonus depreciation received under  
2 the federal Job Creation and Worker Assistance Act of 2002 or the  
3 federal Jobs and Growth Tax Act of 2003, under section 168(k) or  
4 section 1400L of the Internal Revenue Code of 1986, as amended,  
5 for assets placed in service after September 10, 2001, and before  
6 December 31, 2005.

7 (b) For a partnership, limited liability company,  
8 cooperative, including any cooperative exempt from income taxes  
9 under section 521 of the Internal Revenue Code of 1986, as amended,  
10 limited cooperative association, subchapter S corporation, or  
11 joint venture, the increase shall be distributed to the partners,  
12 members, shareholders, patrons, or beneficiaries in the same  
13 manner as income is distributed for use against their income tax  
14 liabilities.

15 (c) For a corporation with a unitary business having  
16 activity both inside and outside the state, the increase shall be  
17 apportioned to Nebraska in the same manner as income is apportioned  
18 to the state by section 77-2734.05.

19 (d) The amount of bonus depreciation added to federal  
20 adjusted gross income or, for corporations and fiduciaries, federal  
21 taxable income by this subsection shall be subtracted in a  
22 later taxable year. Twenty percent of the total amount of bonus  
23 depreciation added back by this subsection for tax years beginning  
24 or deemed to begin before January 1, 2003, under the Internal  
25 Revenue Code of 1986, as amended, may be subtracted in the first

1 taxable year beginning or deemed to begin on or after January 1,  
2 2005, under the Internal Revenue Code of 1986, as amended, and  
3 twenty percent in each of the next four following taxable years.  
4 Twenty percent of the total amount of bonus depreciation added back  
5 by this subsection for tax years beginning or deemed to begin on or  
6 after January 1, 2003, may be subtracted in the first taxable year  
7 beginning or deemed to begin on or after January 1, 2006, under the  
8 Internal Revenue Code of 1986, as amended, and twenty percent in  
9 each of the next four following taxable years.

10 (10) For taxable years beginning or deemed to begin on  
11 or after January 1, 2003, and before January 1, 2006, under the  
12 Internal Revenue Code of 1986, as amended, federal adjusted gross  
13 income or, for corporations and fiduciaries, federal taxable income  
14 shall be increased by the amount of any capital investment that is  
15 expensed under section 179 of the Internal Revenue Code of 1986,  
16 as amended, that is in excess of twenty-five thousand dollars that  
17 is allowed under the federal Jobs and Growth Tax Act of 2003.  
18 Twenty percent of the total amount of expensing added back by  
19 this subsection for tax years beginning or deemed to begin on or  
20 after January 1, 2003, may be subtracted in the first taxable year  
21 beginning or deemed to begin on or after January 1, 2006, under the  
22 Internal Revenue Code of 1986, as amended, and twenty percent in  
23 each of the next four following tax years.

24 (11)(a) Federal adjusted gross income shall be reduced  
25 by contributions, up to two thousand dollars per married filing

1 jointly return or one thousand dollars for any other return, and  
2 any investment earnings made as a participant in the Nebraska  
3 long-term care savings plan under the Long-Term Care Savings Plan  
4 Act, to the extent not deducted for federal income tax purposes.

5 (b) Federal adjusted gross income shall be increased by  
6 the withdrawals made as a participant in the Nebraska long-term  
7 care savings plan under the act by a person who is not a qualified  
8 individual or for any reason other than transfer of funds to a  
9 spouse, long-term care expenses, long-term care insurance premiums,  
10 or death of the participant, including withdrawals made by reason  
11 of cancellation of the participation agreement or termination of  
12 the plan, to the extent previously deducted as a contribution or as  
13 investment earnings.

14 (12) There shall be added to federal adjusted gross  
15 income for individuals, estates, and trusts any amount taken as  
16 a credit for franchise tax paid by a financial institution under  
17 sections 77-3801 to 77-3807 as allowed by subsection (5) of section  
18 77-2715.07.

19 Sec. 2. Section 85-1801, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 85-1801 The Legislature finds that the general welfare  
22 and well-being of the state are directly related to educational  
23 levels and skills of the citizens of the state and that a vital and  
24 valid public purpose is served by the creation and implementation  
25 of programs which encourage and make possible the attainment of

1 higher education by the greatest number of citizens of the state.  
2 The state has limited resources to provide additional programs  
3 for higher education funding and the continued operation and  
4 maintenance of the state's public institutions of higher education,  
5 and the general welfare of the citizens of the state will be  
6 enhanced by establishing a program which allows parents and others  
7 interested in the higher education of our youth to invest money  
8 in a public trust for future application to the payment of higher  
9 education costs. The creation of the means of encouragement for  
10 persons to invest in such a program represents the carrying out  
11 of a vital and valid public purpose. In order to make available  
12 to parents and others interested in the higher education of our  
13 youth an opportunity to fund future higher education needs, it is  
14 necessary that a public trust be established in which money may  
15 be invested for future educational use. It is also necessary to  
16 establish an endowment fund which may not be funded with public  
17 funds but may receive gifts, grants, and donations from private  
18 parties, which will be made available to participants in the trust  
19 to enhance their savings invested for the payment of future higher  
20 education costs.

21 Sec. 3. Section 85-1802, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 85-1802 For purposes of sections 85-1801 to 85-1814:

24 (1) Administrative fund means the administrative fund  
25 College Savings Plan Administrative Fund created in section

1 85-1807;

2 (2) Beneficiary means the individual designated by a  
3 participation agreement to benefit from advance payments of higher  
4 education costs on behalf of the beneficiary;

5 (3) Benefits means the payment of higher education costs  
6 on behalf of a beneficiary by the trust during the beneficiary's  
7 attendance at an institution of higher education;

8 ~~(4) Endowment fund means the endowment fund created in~~  
9 ~~section 85-1807;~~

10 (4) Expense fund means the College Savings Plan Expense  
11 Fund created in section 85-1807;

12 (5) Higher education costs means the certified costs  
13 of tuition and fees, books, supplies, and equipment required for  
14 enrollment or attendance at an institution of higher education.  
15 Reasonable room and board expenses, based on the minimum amount  
16 applicable for the institution of higher education during the  
17 period of enrollment, shall be included as a higher education cost  
18 for those students enrolled on at least a half-time basis. Higher  
19 education costs shall not include any amounts in excess of those  
20 allowed by section 529 of the Internal Revenue Code;

21 (6) Institution of higher education means an institution  
22 described in section 529 of the Internal Revenue Code which  
23 is eligible to participate in the United States Department of  
24 Education's student aid programs;

25 (7) Nebraska educational savings plan trust means the

1 trust created in section 85-1804;

2 (8) Nebraska institution of higher education means an  
3 institution described in section 529 of the Internal Revenue Code  
4 which is eligible to participate in the United States Department of  
5 Education's student aid program and which is located in Nebraska;

6 (9) Participant means an individual, an individual's  
7 legal representative, or any other legal entity authorized to  
8 establish a savings account under section 529 of the Internal  
9 Revenue Code who has entered into a participation agreement for  
10 the advance payment of higher education costs on behalf of a  
11 beneficiary;

12 (10) Participation agreement means an agreement between a  
13 participant and the Nebraska educational savings plan trust entered  
14 into under sections 85-1801 to 85-1814;

15 (11) Program fund means the ~~program fund~~ College Savings  
16 Plan Program Fund created in section 85-1807;

17 (12) Refund penalty means the amount assessed by the  
18 State Treasurer for cancellation of a participation agreement or  
19 other refund which is not considered a de minimis penalty pursuant  
20 to section 529 of the Internal Revenue Code;

21 (13) Section 529 of the Internal Revenue Code means such  
22 section of the code and the regulations interpreting such section,  
23 as such section and regulations existed on April 18, 2001; and

24 (14) Tuition and fees means the quarter or semester  
25 charges imposed to attend an institution of higher education and

1 required as a condition of enrollment.

2           Sec. 4. Section 85-1804, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           85-1804 The Nebraska educational savings plan trust is  
5 created. The State Treasurer is the trustee of the trust and  
6 as such is responsible for the administration, operation, and  
7 maintenance of the program and has all powers necessary to carry  
8 out and effectuate the purposes, objectives, and provisions of  
9 sections 85-1801 to 85-1814 pertaining to the administration,  
10 operation, and maintenance of the trust and program, except that  
11 the state investment officer shall have fiduciary responsibility  
12 to make all decisions regarding the investment of the money in  
13 the administrative fund, ~~endowment fund,~~ expense fund, and program  
14 fund, including the selection of all investment options and the  
15 approval of all fees and other costs charged to trust assets except  
16 costs for administration, operation, and maintenance of the trust  
17 as appropriated by the Legislature, pursuant to the directions,  
18 guidelines, and policies established by the Nebraska Investment  
19 Council. The State Treasurer may adopt and promulgate rules and  
20 regulations to provide for the efficient administration, operation,  
21 and maintenance of the trust and program. The State Treasurer shall  
22 not adopt and promulgate rules and regulations that in any way  
23 interfere with the fiduciary responsibility of the state investment  
24 officer to make all decisions regarding the investment of money in  
25 the administrative fund, ~~endowment fund,~~ expense fund, and program

1 fund. The State Treasurer or his or her designee shall have the  
2 power to:

3 (1) Enter into agreements with any institution of higher  
4 education, the state, any federal or other state agency, or any  
5 other entity to implement sections 85-1801 to 85-1814, except  
6 agreements which pertain to the investment of money in the  
7 administrative fund, ~~endowment fund,~~ expense fund, or program  
8 fund;

9 (2) Carry out the duties and obligations of the trust;

10 ~~(3) Accept any grants or gifts which shall be deposited~~  
11 ~~into the endowment fund;~~

12 ~~(4)~~ (3) Carry out studies and projections to advise  
13 participants regarding present and estimated future higher  
14 education costs and levels of financial participation in the  
15 trust required in order to enable participants to achieve their  
16 educational funding objectives;

17 ~~(5)~~ (4) Participate in any federal, state, or local  
18 governmental program for the benefit of the trust;

19 ~~(6)~~ (5) Procure insurance against any loss in connection  
20 with the property, assets, or activities of the trust as provided  
21 in section 81-8,239.01;

22 ~~(7) Solicit and accept for the benefit of the endowment~~  
23 ~~fund gifts, grants, and donations from private parties;~~

24 ~~(8)~~ (6) Enter into participation agreements with  
25 participants;

1           ~~(9)~~ (7) Make payments to institutions of higher education  
2 pursuant to participation agreements on behalf of beneficiaries;

3           ~~(10)~~ (8) Make refunds to participants upon the  
4 termination of participation agreements pursuant to the provisions,  
5 limitations, and restrictions set forth in sections 85-1801 to  
6 85-1814;

7           ~~(11)~~ (9) Contract for goods and services and engage  
8 personnel as necessary, including consultants, actuaries, managers,  
9 legal counsels, and auditors for the purpose of rendering  
10 professional, managerial, and technical assistance and advice  
11 regarding trust administration and operation, except contracts  
12 which pertain to the investment of the administrative, ~~endowment,~~  
13 expense, or program funds; and

14           ~~(12)~~ (10) Establish, impose, and collect administrative  
15 fees and charges in connection with transactions of the trust,  
16 and provide for reasonable service charges, including penalties for  
17 cancellations, refund penalties, and late payments with respect to  
18 participation agreements.

19           The Nebraska Investment Council may adopt and promulgate  
20 rules and regulations to provide for the prudent investment of  
21 the assets of the trust. The council or its designee also has the  
22 authority to select and enter into agreements with individuals and  
23 entities to provide investment advice and management of the assets  
24 held by the trust, establish investment guidelines, objectives, and  
25 performance standards with respect to the assets held by the trust,

1 and approve any fees, commissions, and expenses, which directly or  
2 indirectly affect the return on assets.

3           Sec. 5. Section 85-1807, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           85-1807 (1) The State Treasurer shall deposit money  
6 received by the Nebraska educational savings plan trust into three  
7 funds: ~~The program fund, the endowment fund, and the administrative~~  
8 ~~fund.~~ The College Savings Plan Program Fund, the College Savings  
9 Plan Expense Fund, and the College Savings Plan Administrative  
10 Fund. The State Treasurer shall deposit money received by the  
11 trust into the appropriate fund. The State Treasurer and Accounting  
12 Administrator of the Department of Administrative Services shall  
13 determine the state fund types necessary to comply with section 529  
14 of the Internal Revenue Code and state policy. The money in the  
15 funds shall be invested by the state investment officer pursuant  
16 to policies established by the Nebraska Investment Council. The  
17 program fund, the expense fund, and the administrative fund shall  
18 be separately administered. The Nebraska educational savings plan  
19 trust shall be operated with no General Fund appropriations.

20           (2) All money paid by participants in connection with  
21 participation agreements and all investment income earned on such  
22 money shall be deposited as received into separate accounts within  
23 the program fund. All money received by the trust from the proceeds  
24 of gifts and other endowments for the purposes of the trust and  
25 all investment income earned on such money shall be deposited as

1 received into the endowment fund. The program fund, administrative  
2 fund, and endowment fund shall be separately administered. Any  
3 gifts, grants, or donations to the trust for deposit to the  
4 endowment fund shall be a grant, gift, or donation to the state  
5 for the accomplishment of a valid public eleemosynary, charitable,  
6 and educational purpose and shall not be included in the income of  
7 the donor for state income tax purposes. Contributions to the trust  
8 made by participants or received in the form of gifts, grants, or  
9 donations may only be made in the form of cash. All funds generated  
10 in connection with participation agreements shall be deposited into  
11 the appropriate accounts within the program fund. A participant  
12 or beneficiary shall not provide investment direction regarding  
13 program contributions or earnings held by the trust. Money accrued  
14 by participants in the program fund may be used for payments to any  
15 institution of higher education.

16 (3) The College Savings Plan Administrative Fund is  
17 created. Money from the trust transferred from the expense fund to  
18 the administrative fund in an amount authorized by an appropriation  
19 from the Legislature shall be utilized to pay for the costs  
20 of administering, operating, and maintaining the trust, to the  
21 extent permitted by section 529 of the Internal Revenue Code. The  
22 administrative fund shall not be credited with any money other than  
23 money transferred from the expense fund in an amount authorized  
24 by an appropriation by the Legislature or any interest income  
25 earned on the balances held in the administrative fund. The State

1 Treasurer shall transfer any money in the administrative fund on  
2 the operative date of this act to the expense fund on the operative  
3 date of this act, or as soon as administratively possible. Any  
4 money in the administrative fund available for investment shall be  
5 invested by the state investment officer pursuant to the Nebraska  
6 Capital Expansion Act and the Nebraska State Funds Investment Act.

7           ~~(2) Each beneficiary under a participation agreement~~  
8 ~~shall receive a pro rata interest in the endowment fund each~~  
9 ~~year after any transfers to the administrative fund have been~~  
10 ~~made. The amount received from the endowment fund shall be in the~~  
11 ~~ratio that the principal amount paid by the participant under the~~  
12 ~~participation agreement and investment income earned to date under~~  
13 ~~the agreement bears to the principal amount of all money, funds,~~  
14 ~~and securities then held in the program fund, but not to exceed the~~  
15 ~~amount which, in combination with the current payment due from the~~  
16 ~~program fund, equals the beneficiary's higher education costs for~~  
17 ~~the current period of enrollment. Money accrued by participants in~~  
18 ~~the program fund may be used for payments to any institution of~~  
19 ~~higher education. No rights to any money derived from the endowment~~  
20 ~~fund shall exist if money payable under the participation agreement~~  
21 ~~is paid to an institution of higher education which is not a~~  
22 ~~Nebraska institution of higher education.~~

23           (4) The College Savings Plan Expense Fund is created.  
24 The expense fund shall be used to pay costs associated with the  
25 Nebraska educational savings plan trust and shall be funded with

1 fees assessed to the program fund. The State Treasurer shall  
2 transfer from the expense fund to the State Investment Officer's  
3 Cash Fund an amount equal to the pro rata share of the budget  
4 appropriated to the Nebraska Investment Council as permitted in  
5 section 72-1249.02, to cover reasonable expenses incurred for  
6 investment management of the Nebraska educational savings plan  
7 trust. Annually and prior to such transfer to the State Investment  
8 Officer's Cash Fund, the State Treasurer shall report to the  
9 budget division of the Department of Administrative Services and to  
10 the Legislative Fiscal Analyst the amounts transferred during the  
11 previous fiscal year. The State Treasurer shall transfer any money  
12 in the endowment fund on the operative date of this act to the  
13 expense fund on such date. Transfers may be made from the expense  
14 fund to the General Fund at the direction of the Legislature.  
15 Any money in the expense fund available for investment shall be  
16 invested by the state investment officer pursuant to the Nebraska  
17 Capital Expansion Act and the Nebraska State Funds Investment Act.

18           Sec. 6. Section 85-1808, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           85-1808 (1) A participant may cancel a participation  
21 agreement at will. The trustee shall determine and collect a refund  
22 penalty by deducting the refund penalty from the returned funds.  
23 Collected refund penalties shall be deposited in the endowment  
24 expense fund. Endowment fund money credited to the program account  
25 shall be forfeited and returned to the endowment fund.

1           (2) Upon the occurrence of any of the following  
2 circumstances, no refund penalty shall be levied by the trust in  
3 the event of a refund or termination of a participation agreement:

4           (a) Death of the beneficiary;

5           (b) Permanent disability or mental incapacity of the  
6 beneficiary;

7           (c) The beneficiary is awarded a scholarship as defined  
8 in section 529 of the Internal Revenue Code, but only to the extent  
9 the refund of earnings does not exceed the scholarship amount; or

10           (d) A qualified rollover is made as permitted by section  
11 529 of the Internal Revenue Code, except that if a qualified  
12 rollover is made into a plan sponsored by another state or entity,  
13 the participation agreement shall be deemed to have been canceled  
14 for purposes of subdivision ~~(8)(d)~~ (8)(c) of section 77-2716 and  
15 federal adjusted gross income shall be increased to the extent  
16 previously deducted as a contribution to the trust.

17           (3) In the event of cancellation of a participation  
18 agreement for any of the causes listed in subsection (2) of this  
19 section, the participant shall be entitled to receive the principal  
20 amount of all contributions made by the participant under the  
21 participation agreement plus the actual program fund investment  
22 income earned on the contributions, less any losses incurred on  
23 the investment, ~~but not endowment fund money.~~ Notwithstanding any  
24 other provisions of this section, under no circumstances shall a  
25 participant or beneficiary receive a refund or distribution that

1 is more than the fair market value of the specific account on the  
2 applicable liquidation date.

3 Sec. 7. Section 85-1813, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 85-1813 The assets of the Nebraska educational savings  
6 plan trust, including the program fund and excluding the  
7 administrative fund and the expense fund, and endowment fund, shall  
8 at all times be preserved, invested, and expended solely and only  
9 for the purposes of the trust and shall be held in trust for the  
10 participants and beneficiaries. No property rights in the trust  
11 shall exist in favor of the state. ~~The~~ Such assets of the trust  
12 shall not be transferred or used by the state for any purposes  
13 other than the purposes of the trust.

14 Sec. 8. Laws 2009, First Special Session, LB 1, section  
15 228, is amended to read:

16 Sec. 228. FUND TRANSFERS

17 The State Treasurer shall, on or before June 30 in each  
18 fiscal year on such dates as directed by the budget administrator  
19 of the budget division of the Department of Administrative  
20 Services, transfer the amounts shown in this section to the  
21 General Fund from the specified cash funds:

22	AG#	Fund Name	FY2009-10	FY2010-11
23	3	Clerk of the Legislature Cash Fund	1,220	2,439
24	3	Nebraska Legislative Shared		
25		Information System Cash Fund	10,505	11,009

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1	5 Supreme Court Automation Cash Fund	-0-	201,502
2	5 Probation Program Cash Fund	-0-	479,572
3	9 Administration Cash Fund	3,890	7,977
4	9 Corporation Cash Fund	16,055	32,762
5	9 Records Management Cash Fund	71,543	118,154
6	9 Uniform Commercial Code Cash Fund	28,706	58,366
7	9 Nebraska Collection Agency Fund	2,023	4,156
8	11 State Settlement Cash Fund	26,587	53,896
9	12 Unclaimed Property Cash Fund	16,060	32,866
10	12 Treasury Management Cash Fund	16,711	34,177
11	<del>12 Educational Savings Plan</del>		
12	Administrative Fund	<u>1,262,619</u>	<u>25,636</u>
13	<u>12 Educational Savings Plan</u>	<u>1,262,619</u>	<u>-0-</u>
14	<u>Administrative Fund</u>		
15	<u>12 College Savings Plan Expense Fund</u>	<u>-0-</u>	<u>25,636</u>
16	13 Professional Practices Commission Fund	3,773	6,485
17	13 State Department of Education		
18	Cash Fund	47,605	97,468
19	14 Municipal Rate Negotiations		
20	Revolving Loan Fund	43,253	87,175
21	14 Nebraska Competitive Telephone		
22	Marketplace Fund	225	100
23	14 Nebraska Telecommunications		
24	Relay System Fund	39,931	80,016
25	14 Enhanced Wireless 911 Fund	3,400,000	0
26	14 Grain Warehouse Auditing Fund	725	1,590

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1	14 Nebraska Grain Warehouse		
2	Surveillance Cash Fund	242	530
3	14 Nebraska Internet Enhancement Fund	1,819	3,663
4	16 Charitable Gaming Operations Fund	556,734	116,817
5	16 Motor Fuel Tax Enforcement		
6	and Collection Cash Fund	905,300	94,700
7	16 Petroleum Release Remedial		
8	Action Collection Fund	3,748	7,800
9	16 Department of Revenue		
10	Miscellaneous Receipts Fund	1,717	3,453
11	16 Department of Revenue Property		
12	Assessment Division Cash Fund	1,250,000	1,000,000
13	16 Marijuana and Controlled Substances		
14	Tax Administration Cash Fund	578	1,162
15	16 Department of Revenue Enforcement Fund	27,919	56,151
16	16 Waste Reduction and Recycling		
17	Incentive Fees Collection Fund	1,328	2,671
18	16 Severance Tax Administration Fund	100,000	0
19	16 Nebraska Incentives Fund	7,748	15,583
20	16 Tobacco Products Administration		
21	Cash Fund	500,000	500,000
22	16 State Athletic Commissioner's		
23	Cash Fund	300,000	0
24	17 Department of Aeronautics Cash Fund	87,127	154,510
25	18 Buffer Strip Incentive Fund	150,000	48,002
26	18 Commercial Feed Administration		

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1	Cash Fund	650,000	0
2	18 Weed Book Cash Fund	19,999	19,997
3	18 Nebraska Seed Administrative Cash Fund	20,001	20,001
4	18 Pure Food Cash Fund	0	29,998
5	18 Weights and Measures		
6	Administrative Fund	20,027	19,997
7	19 Securities Act Cash Fund	4,036,041	5,072,121
8	21 Nebraska Natural Gas		
9	Pipeline Safety Cash Fund	200,000	0
10	21 State Fire Marshal Cash Fund	140,429	84,009
11	21 Training Division Cash Fund	566	1,135
12	21 Underground Storage Tank Fund	100,000	0
13	22 Department of Insurance Cash Fund	3,000,000	3,000,000
14	24 Motorcycle Safety Education Fund	4,583	9,650
15	24 Department of Motor Vehicles Cash Fund	1,174,344	328,407
16	25 Professional and Occupational		
17	Credentialing Cash Fund	126,959	258,672
18	25 Rural Health Professional		
19	Incentive Fund	38,600	77,201
20	25 Tobacco Prevention and Control		
21	Cash Fund	75,150	650,300
22	25 Health and Human Services Cash Fund	3,419,720	2,559,140
23	27 State Recreation Road Fund	378,306	1,064,006
24	29 Small Watersheds Flood Control Fund	12,500	25,000
25	29 Nebraska Soil and Water		
26	Conservation Fund	10,125	20,250

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1	29 Nebraska Resources Development Fund	1,250	2,500
2	29 Natural Resources Water Quality Fund	31,250	62,500
3	29 Water Well Decommissioning Fund	6,021	12,042
4	29 Department of Natural Resources		
5	Cash Fund	12,456	24,913
6	29 Water Resources Cash Fund	75,000	150,000
7	30 Electrical Division Fund	160,430	203,396
8	31 Military Department Cash Fund	11,415	22,829
9	32 Surveyors' Cash Fund	90	176
10	32 Survey Record Repository Fund	500	975
11	33 Nebraska Outdoor Recreation		
12	Development Cash Fund	378,307	1,064,007
13	33 Nebraska Snowmobile Trail Cash Fund	250,000	0
14	33 Niobrara Council Fund	25	50
15	35 Nebraska Liquor Control Commission		
16	Rule and Regulation Cash Fund	1,861	3,722
17	37 Compensation Court Cash Fund	1,000,000	1,000,000
18	40 Nebraska Motor Vehicle Industry		
19	Licensing Fund	17,477	35,988
20	41 State Real Estate Commission's Fund	27,887	57,449
21	45 Board of Barber Examiners Fund	17,261	7,739
22	46 Department of Correctional Services		
23	Facility Cash Fund	2,388	4,775
24	47 State Educational		
25	Telecommunications Fund	6,388	12,777
26	48 Coordinating Commission for		

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1	Postsecondary Education Cash Fund	251	502
2	53 Real Property Appraiser Fund	35,441	14,559
3	54 Historical Society Fund	43,425	92,400
4	57 Oil and Gas Conservation Fund	19,719	39,503
5	58 Engineers and Architects		
6	Regulation Fund	169,464	39,745
7	59 Geologists Regulation Fund	812	1,650
8	62 Land Surveyor Examiner's Fund	747	1,494
9	63 Certified Public Accountants Fund	78,310	21,690
10	64 Carrier Enforcement Cash Fund	446,890	459,035
11	64 Nebraska State Patrol Drug Control and		
12	Education Cash Fund	36,500	74,450
13	65 Communications Cash Fund	115,307	229,771
14	65 Vacant Building and Excess Land		
15	Cash Fund	6,038	12,075
16	65 State Building Renewal Assessment Fund	12,007	23,958
17	65 Resource Recovery Fund	1,677	3,353
18	65 Capitol Restoration Cash Fund	931	1,863
19	66 Abstracters Board of Examiners		
20	Cash Fund	1,151	2,368
21	71 State Energy Office Cash Fund	10,655	20,307
22	71 School Weatherization Fund	756	1,510
23	72 Local Civic, Cultural, and Convention		
24	Center Financing Fund	16,250	32,500
25	72 Job Training Cash Fund	5,000,340	680
26	72 Administrative Cash Fund	6,112	12,242

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1	72 Nebraska Agricultural Products		
2	Research Fund	375	750
3	72 Affordable Housing Trust Fund	340	680
4	73 State Board of Landscape		
5	Architects Cash Fund	572	1,143
6	74 Nebraska Power Review Fund	10,052	20,583
7	78 Community Corrections Uniform Data		
8	Analysis Cash Fund	12,914	21,364
9	78 Nebraska Law Enforcement Training		
10	Center Cash Fund	16,039	32,456
11	78 Law Enforcement Improvement Fund	12,051	24,145
12	81 Commission for the Blind and		
13	Visually Impaired Cash Fund	1,461	4,531
14	82 Commission for the Deaf and		
15	Hard of Hearing Fund	148	672
16	84 Chemigation Costs Fund	150,000	0
17	84 Livestock Waste Management Cash Fund	200,000	100,000
18	84 Waste Reduction and Recycling		
19	Incentive Fund	1,608,863	1,517,501
20	84 Superfund Cost Share Cash Fund	64,686	0
21	87 Nebraska Accountability and		
22	Disclosure Commission Cash Fund	4,095	8,423
23	87 Campaign Finance Limitation Cash Fund	21,588	48,495
24	93 Tax Equalization and Review		
25	Commission Cash Fund	77,500	5,000
26	94 Commission on Public Advocacy		

